

United States Bankruptcy Court Southern District of Texas		PROOF OF CLAIM
Name of Debtor: Ampro Energy, L.P.	Case Number: 06-34291-H3-11	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): Buckner Apartments Partners #1, Ltd.	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notice should be sent: Nathan Sommers Jacobs, A Professional Corporation Gretchen McCord and Michael Ballases 2800 Post Oak Blvd., 61 st Floor Houston, TX 77056 Telephone Number: 713-960-0303	AND Attn: John McCrary 2710 Ivy Dell Court Houston, Texas 77059	
Last Four digits of account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces a previously filed claim, dated _____ if this claim: <input type="checkbox"/> amends	
1. Basis for Claim: <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other: Breach of Electricity Sales Agreement		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensations (Fill out below) Last Four Digits of Your SS # _____ Unpaid compensations for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred: See attached	3. If court judgment, date obtained: N/A	
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse for important explanations.		
Unsecured Nonpriority Claim \$936,287.40 (See Attached Notes) <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.	Secured Claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).	
Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000),* earned not more than 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier -- 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Contributions to an employee benefit plan -- U.S.C. § 507(a)(5)	Brief description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____	
<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties of governmental units -- § 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. §§ 507(a)(_____)		
<small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment</small>		
5. Total Amount of Claim at Time Case Filed: \$936,287.40 \$936,287.40 (see attached)		
<div style="display: flex; justify-content: space-around; font-size: small;"> (Unsecured) (Secured) (Priority) (Total) </div> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. (SEE ATTACHED regarding 6 and 7)		THIS SPACE IS FOR COURT USE ONLY
Date: 12/14/2006	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): /s/ Harold R. DeMoss, III, Vice Principal, Buckner-Beckley, L.L.C. (General Partner of Claimant)	

Endnotes

Brief Summary:

Buckner Apartments Partners #1, Ltd. ("Buckner" or "Claimant") is the owner of a 523 unit residential apartment complex, known as Buckner Park, located in Dallas, Texas. On or around May 11, 2005, Buckner and Ampro Energy L.P. ("Debtor") entered into an Electricity Sales Agreement (as amended) (the "Contract") whereby Debtor agreed to provide electricity to Buckner for a thirty-six (36) month term at the fixed rate of .0725 cents per kilowatt-hour. On December 10, 2005, Debtor notified Buckner in writing that it would discontinue retail electric service to its customers beginning on December 20, 2005, thereby unilaterally terminating the Contract with twenty-nine (29) months remaining on the Contract. As such, Buckner was forced to enter into a replacement energy contract with a new provider for the property ("Replacement Contract"). Buckner entered into a replacement electricity contract for a higher price, and, therefore was economically damaged by Debtor. Accordingly, Buckner commenced a lawsuit against Debtor and Ampro Energy G.P., L.L.C. ("Ampro GP") in the 280th Judicial District Court of Harris County, Houston Texas, which case was assigned Cause No. 2006-07762 ("State Court Buckner Litigation"). On or about May 10, 2006, Buckner filed Plaintiff's First Amended Original Petition in the State Court Buckner Litigation ("Petition"). In the Petition, Buckner brought causes of action for breach of the Contract, misrepresentation, fraud and violations of the Texas Deceptive Trade Practices Act ("DTPA"). Buckner seeks a judgment against Debtor for damages, reasonable and necessary attorney's fees court costs and pre- and post-judgment interest. Debtor answered in the State Court Buckner Litigation. Thereafter, Debtor filed this Bankruptcy case. Additionally, Buckner has learned that certain funds are being held by TXU Corp. (or an affiliate thereof) in an escrow account for the benefit of various claimants, including, *inter alia*, Buckner. On information and belief, in addition to claims against the Debtor, Buckner asserts an interest and right to the funds in the hands of TXU, including without limitation a right in the funds to the extent that such funds are held in trust for the benefit of various claimants of the Debtor, including Buckner.

Calculation of Claim:

Contract Rate per Replacement Contract (.11800 Kwh)

(Less)

Contract Rate per Contract between Buckner and Debtor (.0725 Kwh) = .0455

(Multiplied by)

Actual Usage for 2006 (3,170,667) = \$144,265.34

(Divided by)

Twelve months to obtain a monthly average = \$12,022.11

(Multiplied by)

Twenty-Nine (29) Months (months remaining on Buckner/Ampro Contract) = \$348,641.19

Total Cost of Replacement: \$348,641.19

Factoring in Treble Damages Under DTPA \$1,045,923.50

Plus Attorneys Fees Incurred Through August 31, 2006 (Date of Filing) \$14,228.59

Total Buckner Claim: \$1,060,152.00

Credits and Offsets:

Buckner has given credit to Debtor for all service provided during the first seven (7) months of the Contract. In the State Court Buckner Litigation, the Debtor has counterclaimed for \$128,283.96 for amounts invoiced to Buckner by Ampro for services provided. Debtor asserts that it is entitled to setoff those amounts against Buckner's claim. Buckner's records reflect a balance of \$123,864.62. After setoff, Buckner's claim is reduced to \$936,287.40.

Buckner Claim After Applying \$123,864.62 setoff \$936,287.40

Documents Attached Hereto:

Exhibit 1 Petition in State Court Buckner Litigation

Exhibit 2 Electricity Sales Agreement Between Ampro and Buckner

Exhibit 3 Amendment to Electricity Sales Agreement

- Buckner reserves the right to amend this proof of claim based on further developments in this Bankruptcy and/or information obtained during discovery of the State Court Buckner Litigation or otherwise. Additionally, other documentation may be supportive of Buckner's claim, which is not attached hereto due to its voluminous nature. Such additional documentation includes, without limitation, the following:

Replacement Contract

Invoices Supporting Actual Usage For 2006

Ampro/Buckner Invoices Establishing \$123,864.62 Balance

Client Ledger Report Reflecting Attorneys Fees as of Date of Bankruptcy Filing

CERTIFICATE OF SERVICE

This is to certify that the foregoing Proof of Claim was served on the parties listed below by first class U.S. Mail, postage prepaid, and/or electronically to those in the ECF system for this case, on the 14th day of December, 2006.

Debtor:

AmPro Energy LP
19747 Hwy 59N Ste 250
Humble, TX 77338-3525

Debtor's Counsel:

Richard L Fuqua, II
Fuqua & Keim
2777 Allen Parkway, Ste 480
Houston, TX 77019

Chapter 11 Trustee:

Rodney D. Tow
26219 Oak Ridge Drive
The Woodlands, TX 77380

Counsel for Chapter 11 Trustee:

Erin E. Jones
Diamond McCarthy LLP
909 Fannin Street, Suite 1500
Houston, Texas 77010

U.S. Trustee:

Office of U.S. Trustee
515 Rusk, Suite 3516
Houston, TX 77002

Ashish Mahendru
1111 Bagby #2000
Houston, TX 77002

Michael M Essmyer
Essmyer & Tritico
4300 Scotland
Houston, TX 77007

/s/ Gretchen McCord

2800 Post Oak Blvd., 61st Floor
Houston, TX 77056



CAUSE NO. 2006-07762

IN THE DISTRICT COURT OF

BUCKNER APARTMENTS
PARTNERSHIP #1, LTD.,
Plaintiff,

VS.

AMPRO ENERGY L.P. AND
AMPRO ENERGY G.P., L.L.C.,
Defendants.

VS.

BUCKNER-BECKLEY, L.L.C.
Third-Party Defendant.

HARRIS COUNTY, TEXAS

280th JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

Buckner Apartments Partnership #1, Ltd. ("Buckner") files this first amended petition against Ampro Energy L.P. and Ampro Energy G.P., L.L.C. (together "Ampro").

Discovery control plan

1. Plaintiff elects discovery control plan level 2 under TEX. R. CIV. P. 190.3.

Parties

2. Buckner Apartments Partnership #1, Ltd. is a Texas limited partnership which conducts business in Harris County, Texas.
3. Ampro Energy L.P. is a Texas limited partnership that may be served through its current counsel of record, Stephen Brownell, at 19747 Hwy. 59 N., Suite 250, Humble, Texas, 77338-3525 and its substituting counsel, Kevin Smith, of the law firm Smith & Ceransuolo, located at 7500 San Felipe, Suite 410, Houston, Texas 77063.
4. Ampro Energy G.P., L.L.C. is a Texas limited liability company that may be served through its current counsel of record, Stephen Brownell, at 19747 Hwy. 59 N., Suite 250, Humble, Texas, 77338-3525 and its substituting counsel, Kevin Smith, of the law firm Smith & Ceransuolo,

located at 7500 San Felipe, Suite 410, Houston, Texas 77063. Ampro Energy G.P., L.L.C. is the general partner of Ampro Energy L.P. and as such is jointly and severally liable for all damages awarded to Buckner.

Jurisdiction and venue

5. This Court has personal jurisdiction over Ampro because it is a Texas limited partnership that conducts business in Texas and has continuous and systematic contacts with Texas. This Court has personal jurisdiction over Ampro Energy G.P., L.L.C. because it is a Texas limited liability company that conducts business in Texas and has continuous and systematic contacts with Texas. This Court has subject matter jurisdiction over this claim because the amount in controversy exceeds the court's jurisdictional minimum. Moreover, the defendants have subjected themselves to the jurisdiction of this court by answering this lawsuit and filing a counterclaim in response thereto.

6. Venue is proper in Harris County, Texas because the defendants' principal place of business is located in Harris County, Texas, and all or substantially all of the events which gave rise to this claim occurred in Harris County, Texas.

Facts

7. Buckner is the owner of a 523 unit residential apartment complex, known as Buckner Park, located in Dallas, Texas.

8. On or around May 11, 2005, Buckner and Ampro entered into an Electricity Sales Agreement (the "Contract") whereby Ampro agreed to provide electricity to Buckner for a 36 month term at the fixed rate of .0719 cents per kilowatt-hour. On December 10, 2005, Ampro notified Buckner in writing that Ampro would discontinue retail electric service to its customers beginning

on December 20, 2005, thereby unilaterally terminating the Contract. As such, Buckner was forced to enter into a replacement energy contract with a new provider for the property. Buckner entered into a replacement electricity contract for a higher price. As such, Buckner has been economically damaged by Ampro.

**First cause of action
Breach of contract**

9. Ampro's failure to provide electric service in accordance with the Contract resulted in a breach of the Contract. Buckner seeks its damages caused by such breach, including actual, consequential, direct, special, and incidental damages, attorney's fees, costs of court, and pre- and post-judgment interest.

**Second cause of action
Misrepresentation**

10. Ampro committed misrepresentation when it refused and failed to perform in accordance with the Contract after representing to Buckner that Ampro had the ability to perform as stated in the Contract. Ampro's representations to Buckner were made in a transaction in which Ampro had an interest. Ampro supplied false information and did not exercise reasonable care or competence in obtaining the information which Ampro supplied to Buckner and Buckner relied thereon. Buckner seeks its actual, consequential, and incidental damages, costs of court, and pre- and post-judgment interest.

**Third cause of action
Fraud**

11. Ampro committed fraud when it misrepresented its ability to perform in accordance with the Contract. Ampro's representations were material because Buckner would not have agreed

to the Contract if otherwise. Ampro's representations were false and Ampro, at the time it made the representation, knew it was false or made it recklessly, as a positive assertion and without knowledge of its truth. Buckner seeks its actual, consequential, and incidental damages, reasonable and necessary attorney's fees, costs of court, and pre- and post-judgment interest.

**Fourth cause of action
Violation of Texas Deceptive Trade Practices Act**

12. Buckner is a consumer. Ampro's knowing and intentional actions violate TEX. BUS. & COM. CODE § 17.46(b)(24) and § 17.50(a)(2) and (3). Buckner provided notice of its claim to Ampro, and Ampro had an opportunity to respond to the claim. Ampro did not make a reasonable offer to settle the claim within 60 days. Buckner seeks its damages caused by the deceptive acts of Ampro, including economic damages, additional damages of three times economic damages, actual, consequential, and incidental damages, attorneys fees, costs of court, and pre- and post-judgment interest.

Conclusion

13. Buckner Apartments Partnership #1, Ltd. requests that the court grant judgment in its favor against Ampro Energy L.P. and Ampro Energy G.P., L.L.C., for their actual, consequential, direct, special, and incidental damages, reasonable and necessary attorney's fees, economic damages, additional damages, costs of court, and pre- and post-judgment interest, and grant all other relief to which it is entitled.

Respectfully submitted,

NATHAN SOMMERS JACOBS
A Professional Corporation

By: 

George R. Gibson
Texas Bar No. 00793802
Michael Ballases
Texas Bar No. 24036179
2800 Post Oak Boulevard, 61st Floor
Houston, Texas 77056
(713) 960-0303
(713) 892-4840 - Fax

ATTORNEYS FOR BUCKNER APARTMENTS
PARTNERSHIP #1, LTD. AND BUCKNER-
BENTLEY, L.L.C..

CERTIFICATE OF SERVICE

I certify that a copy of Plaintiff's First Amended Petition was served as shown below on May 10, 2006.

Kevin Smith
Smith & Cerasuolo, L.L.P.
7500 San Felipe, Suite 410
Houston, Texas 77063
713.787.0003

By Facsimile 713.782.6785
and First Class Mail

Stephen J. Brownell
AmPro Energy L.P.
AmPro Energy G.P., L.L.C.
19747 Hwy. 59 N., Suite 250
Humble, Texas 77338-3525

By Facsimile 281.446.4786
and First Class Mail


Michael Ballases

W:\DeMoss, Chip\Buckner Apt Ptnrs #1\Ampro Energy\POP.1st amended.wpd

EXHIBIT

2



PROPERTY MANAGEMENT ELECTRICITY SALES AGREEMENT

Version 03-28-05

This *AmPro Energy LP Electricity Sale Agreement* ("ESA") (Cover Sheet), together with all exhibits and the General Terms and Conditions, attached hereto, is entered into as of this 11th day of May, 2005 ("Effective Date"). The Parties to this *ESA* are the following:

Co./Legal Name: Buckner Apartment Partners #1, L ("Customer")DBA: Buckner Park☐ Inc. ☐ LLC ☐ LP ☐ Sole Owner ☐ Subsidiary ☐ OtherAddress: PO Box 440067City: Houston Zip: 77244-0067Main Contact: John W McCraryPhone: 713-397-7962 Facsimile: 713-893-4833Facsimile: johnmccrary@juno.comName: AmPro Energy LP ("REP") c/o Contract AdministrationStreet: 19747 Hwy 59 N., Suite 251,City: Humble, Texas 77338Phone: 281-446-2520 or call toll-free, 24 hrs a day, 7 days a week

(866)-AMPROTX (267-7609)

Facsimile: 281-446-4786 Email: customer@amproenergy.comWebsite: www.amproenergy.comInvoices: (Choose Mail or Email)Billing Contact: John W McCrary

Phone: _____ Facsimile: _____

Billing Address: Po Box 440067Email Address: johnmccrary@juno.comTax ID#: 20-1284732 Soc Sec#: _____

Tax Exempt: _____ (Y/N)

Payments (Choose Mail or Electronic)☒ Mail Address: P.O. Box 973145, Dallas, Texas 75397-3545☐ ACH: AmPro Energy LP

RT # _____

Acct # _____

(If selected, Customer must have funds available at least two days prior to due date on AmPro Invoice)

Section A: ESI ID No. ** See Attachment **

Service Address: _____ City: _____, Zip: _____

Section B: Term of 36 Months

Section C: Full Requirements Product

Section D: Contract Price is \$ 0.0719 ~~0.0725~~ KWh****PLUS APPLICABLE TAXES AND TRANSMISSION AND DISTRIBUTION CHARGES ("TDSP CHARGES") AND MONTHLY CUSTOMER CHARGE.**

Customer acknowledges that it has received a copy of the General Terms and Conditions explaining the terms of service on the above referenced date, including the right to review and cancel the agreement within three federal business days from such date without penalty by contacting Customer Service at 281-446-2520; 281-446-4786 (fax), or customer@amproenergy.com. Sixty days prior to the end of the term, AmPro Energy will notify Customer in writing that the contract will renew automatically unless Customer provides 30 days' prior notice that it does not wish to renew by contacting AmPro Energy at the above phone numbers or by email. Customer Initials: _____

AmPro Energy is authorized by me to use the information I am providing in this form to enroll me for electric service. I affirm and represent that I am at least 18 years of age and legally authorized to switch the electricity provider for the address shown below, and I have reviewed, understand and agree to the Terms of Service Agreement for my service plan. By my execution below, I hereby authorize (1) AmPro Energy to become my new Retail Electric Provider (REP) in place of my current REP; and (2) AmPro Energy to act as my agent to make this change and direct my current REP to work with AmPro Energy to make this change. Customer Initials: _____

AMPRO ENERGY LP
By its General Partner,
AmPro Energy GP LLC

Amy Gasca, President

Date: _____

CUSTOMER

By: _____

Title: _____

Name: _____

Date: _____



AMENDMENT
TO ELECTRICITY SALES AGREEMENT
BETWEEN Buckner Park AND
AMPRO ENERGY, LP DATED 5 / 12 / 2005

This Amendment No. 1 to Electricity Sales Agreement (the "ESA") is made and entered into this 28 day of October, 2005, by and between Buckner Park and AmPro Energy, LP ("AmPro"). AmPro and Buckner Park may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Parties entered into that certain Electricity Sales Agreement dated 5 / 12 / 2005 (the "ESA"), under the terms of which AmPro would provide certain retail electric provider services to Customer for certain ESIDs; and

WHEREAS, the Parties desire to amend the ESA as hereinafter set forth;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the Parties do hereby agree as follows:

1. Section A of the Agreement is amended by adding thereto the following facility, which has ESID number: 10443720004212198(see attach). In the event the ESID applies to a facility other than as specified herein, then this Amendment shall be of no force and effect and the Parties shall negotiate in good faith a new amendment.
2. The Parties agree that the Contract Price for electric service at this additional facility shall be \$ 0.0725 for 31 months
3. This Agreement shall become effective as of the date first hereinabove written, and shall be binding upon the Parties and upon their respective successors and assigns.
4. Except as herein changed and amended, the ESA shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first hereinabove written.

AmPro Energy, LP

REP: AMPRO ENERGY, LP CUSTOMER:

By: _____ Signature: _____

Name: Amy Gasca, CEO and President Name: _____

Date: _____ Date: _____

Please fax back to 281-749-8169. Amendment must be signed and returned to us by 10/28/2005 to ensure that pricing is valid.